

Notice of Allowability

Application No.

10/661,378

Examiner

Kimberly A. Ballard

Applicant(s)

DUBIN ET AL.

Art Unit

1649

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the election response dated 29 March 2006.
2. ☒ The allowed claim(s) is/are 22 and 23.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 1/21/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


JANET L. ANDRES
SUPERVISORY PATENT EXAMINER

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the Specification:

On Page 68, lines 1-3, "TITLE OF THE INVENTION. DNA ENCODING A HUMAN SUBUNIT OF THE 5-HT₃ SEROTONIN RECEPTOR" was deleted, and on line 6, "OF THE INVENTION" was deleted.

Formal Matters

The amendment filed 29 March 2006 has been entered in full. In the response to the Restriction Requirement dated 30 January 2006, Applicant elected Group II, claims 10 and 11, drawn to a protein having the amino acid sequence of SEQ ID NO: 9, without traverse. In order to expedite allowance, Applicant cancelled claims 1-21 and replaced claims 10 and 11 with new claims 22 and 23, both drawn to the elected invention.

Information Disclosure Statement

A signed and initialed copy of the IDS paper submitted 21 January 2005 is enclosed in this action.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the citizenship of each inventor.

Two of the inventors' signatures are not dated.

Applicant is now required to submit a substitute declaration or oath to correct the deficiencies set forth in this communication. The substitute oath or declaration must be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability" (PTO-37). Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136. Failure to timely file the substitute declaration (or oath) will result in **ABANDONMENT** of the application. The transmittal letter accompanying the declaration (or oath) should indicate the date of the "Notice of Allowance" (PTOL-85) and the application number in the upper right hand corner.

Reasons For Allowance

The following is an examiner's statement of reasons for allowance:

Claims 22 and 23 are drawn to a novel human serotonin receptor subunit, recombinant 5-HT3C protein, which is useful for identifying modulators, such as therapeutic agents, of human 5-HT3 receptors. The closest prior art found in the sequence databases is:

U.S. Patent No. 6,462,188 to Kirkness, E.F., filed 16 April 1998, issued 8 October 1998, in which is disclosed SEQ ID NO: 2, a novel human 5-HT3B receptor subunit, which shares 22.4% overall homology and 29% local similarity to instantly claimed SEQ ID NO: 9.

Additionally, nucleotide sequences encoding human 5-HT3 receptors, each sharing only 32.5% homology with the instantly claimed 5-HT3C protein, have been disclosed in:

Miyake A. et al. (1995) Molecular cloning of human 5-hydroxytryptamine₃ receptor: Heterogeneity in distribution and function among species. *Mol. Pharmacol.* **48**: 407-416. (listed on Applicant's IDS filed 1/21/05)

Belelli D. et al. (1995) Cloning and functional expression of a human 5-hydroxytryptamin type 3AS receptor subunit. *Mol. Pharmacol.* **48**: 1054-1062. (listed on Applicant's IDS filed 1/21/05)

Brüss M. et al. (1998) Molecular cloning of alternatively spliced human 5HT3 receptor cDNAs. *Ann. N.Y. Acad. Sci.* **861**: 234-235.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Advisory Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly A. Ballard whose telephone number is 571-272-4479. The examiner can normally be reached on M-F 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly A. Ballard, Ph.D.
Art Unit 1649
April 26, 2006